

AMENDED IN SENATE AUGUST 16, 2011

AMENDED IN SENATE MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 568**

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**Introduced by Assembly ~~Member Skinner~~ *Members Skinner and Mitchell***

***(Coauthors: Assembly Members Atkins and Bonnie Lowenthal)***

***(Coauthor: Senator Liu)***

February 16, 2011

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An act to amend ~~Sections 5007.7 and 6030 of~~ *Section 5007.7 of, and to amend and repeal Section 6030 of*, the Penal Code, and to amend Sections 222 and 1774 of the Welfare and Institutions Code, relating to inmates.

### LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Skinner. Pregnant inmates and wards: least restrictive restraints.

Existing law requires the Corrections Standards Authority, *and commencing July 1, 2012, the Board of State and Community Corrections*, to establish minimum standards for state and local correctional facilities, including standards restricting the shackling of women in labor, during childbirth, and while in recovery after giving birth, and to review those standards biennially and make any appropriate revisions, as specified.

This bill would require that the standards ensure that women who are pregnant not be shackled by the wrists, ankles, around the abdomen, or to another person, including during time spent outside a correctional facility, during transport to or from a correctional facility, during labor,

delivery, and while in recovery after giving birth, except that the least restrictive restraints possible may be used when deemed necessary for the inmate, consistent with the legitimate security needs of the inmate, the staff, and the public, and the restraints would only remain in place as long as the threat exists. The bill would require the authority, *and later the board*, to develop these standards regarding the shackling of pregnant women as part of its biennial review of its standards.

Under existing law, pregnant inmates of the Department of Corrections and Rehabilitation, wards of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, and wards in the custody of a local juvenile facility, are to be transported in the least restrictive way possible when being taken to a hospital for purposes of childbirth.

This bill would prohibit inmates and wards of these facilities who are known to be pregnant from being shackled by the wrists, ankles, around the abdomen, or to another person, unless deemed necessary for the safety and security of the inmate or ward, the staff, and the public. If restraints are deemed necessary, the bill would require the least restrictive means be used, consistent with the legitimate security needs of each inmate or ward, and the restraints would only remain in place as long as the threat exists. The bill would provide that these provisions are applicable to movement within the correctional facility, transport to and from the facility, time spent outside the facility to receive medical or dental care, to attend court, or other appointments.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California has the third largest population of incarcerated
- 4 women in the country. Tens of thousands of women go through
- 5 county jails every year and an average of 4 to 7 percent are
- 6 pregnant.
- 7 (b) The health and safety of pregnant inmates shall be a primary
- 8 concern of all adult and juvenile state and local correctional and
- 9 detention facilities.
- 10 (c) Using restraints that significantly limit a pregnant inmate's
- 11 mobility can cause serious and undue health risks to the woman
- 12 and her pregnancy.

1 (d) Potentially harmful methods of restraint include, but are not  
2 limited to, shackling by the ankles, by the wrists in front or behind  
3 the body, across the abdomen, or to another person.

4 (e) To avoid threatening the health of pregnant women and  
5 potential legal challenges, it is critical that policies are adopted  
6 ensuring that restraints are properly used with this vulnerable  
7 population.

8 (f) It is critical that, adult and juvenile state and local  
9 correctional and detention facilities develop policies that ensure  
10 that inmates who are known to be pregnant are not restrained unless  
11 deemed necessary for the security of the inmate, staff, or the public,  
12 or all combined. Should restraints be necessary under these  
13 circumstances, facilities are instructed to use the least restrictive  
14 means of restraint as determined by the Corrections Standards  
15 Authority.

16 (g) These policies must meet the minimum standards established  
17 by the Corrections Standards Authority for the proper use of  
18 restraints on pregnant inmates during transport, as established  
19 pursuant to Section 6030 of the Penal Code.

20 (h) Pursuant to Section 6030 of the Penal Code, the Corrections  
21 Standards Authority has the authority to issue minimum standards  
22 for treatment of people incarcerated within correctional facilities,  
23 treatment of inmates in custody during temporary appointments  
24 outside correctional facilities, and transportation of inmates among  
25 correctional facilities and to and from appointments outside of  
26 correctional facilities. The Corrections Standards Authority has  
27 previously promulgated transportation regulations, including, but  
28 not limited to, requiring local correctional facilities to provide  
29 transportation for inmates in need of medical services as set forth  
30 in subdivision (c) of Section 1206 of Title 15 of the California  
31 Code of Regulations, and requiring all juvenile facilities to provide  
32 transportation for minors to mental health facilities as set forth in  
33 subdivision (f) of Section 1437 of Title 15 of the California Code  
34 of Regulations, and that all juvenile facilities have adequate  
35 transportation staff as set forth in subdivision (g) of Section 1321  
36 of Title 15 of the California Code of Regulations. The Corrections  
37 Standards Authority has also previously established regulations  
38 addressing the treatment of inmates temporarily taken outside of  
39 correctional facilities, including requiring local correctional  
40 facilities to create policies and procedures for handling situations

1 such as furloughs and other temporary releases, and requiring  
2 facilities to have adequate field supervision staff, as set forth in  
3 Sections 1027, 1029, and 1351 of Title 15 of the California Code  
4 of Regulations.

5 SEC. 2. Section 5007.7 of the Penal Code is amended to read:

6 5007.7. An inmate known to be pregnant shall not be shackled  
7 by the wrists, ankles, around the abdomen, or to another person,  
8 unless deemed necessary for the safety and security of the inmate,  
9 the staff, or the public. In cases where restraints are deemed  
10 necessary, the least restrictive means shall be used, which may  
11 include cuffing an inmate's wrists in front, consistent with the  
12 legitimate security needs of each inmate. The restraints shall remain  
13 in place only as long as the threat exists. These provisions apply  
14 to, but are not limited to, movement within the correctional facility,  
15 transport to and from the facility, and time spent outside of the  
16 facility to receive medical or dental care, to attend court, or any  
17 other appointment.

18 SEC. 3. Section 6030 of the Penal Code is amended to read:

19 6030. (a) The Corrections Standards Authority shall establish  
20 minimum standards for state and local correctional facilities. The  
21 authority shall review those standards biennially and make any  
22 appropriate revisions.

23 (b) The standards shall include, but not be limited to, the  
24 following: health and sanitary conditions, fire and life safety,  
25 security, rehabilitation programs, recreation, treatment of persons  
26 confined in state and local correctional facilities, and personnel  
27 training.

28 (c) The standards shall require that at least one person on duty  
29 at the facility is knowledgeable in the area of fire and life safety  
30 procedures.

31 (d) The standards shall also include requirements relating to the  
32 acquisition, storage, labeling, packaging, and dispensing of drugs.

33 (e) The standards shall require that inmates who are received  
34 by the facility while they are pregnant are provided all of the  
35 following:

36 (1) A balanced, nutritious diet approved by a doctor.

37 (2) Prenatal and postpartum information and health care,  
38 including, but not limited to, access to necessary vitamins as  
39 recommended by a doctor.

1 (3) Information pertaining to childbirth education and infant  
2 care.

3 (4) A dental cleaning while in a state facility.

4 (f) The standards shall provide that a woman known to be  
5 pregnant shall not be shackled by the wrists, ankles, around the  
6 abdomen, or to another person, except as provided in Section  
7 5007.7. This includes, but is not limited to, time spent outside a  
8 correctional facility, during transport to or from a correctional  
9 facility, during labor, during delivery, and while in recovery after  
10 giving birth, except as provided in Section 5007.7. The authority  
11 shall develop standards regarding the shackling of pregnant women  
12 pursuant to the amendments made to this subdivision as part of its  
13 biennial review of the standards established pursuant to this section.

14 (g) In establishing minimum standards, the authority shall seek  
15 the advice of the following:

16 (1) For health and sanitary conditions:

17 The State Department of ~~Health Services~~ *Public Health*,  
18 physicians, psychiatrists, local public health officials, and other  
19 interested persons.

20 (2) For fire and life safety:

21 The State Fire Marshal, local fire officials, and other interested  
22 persons.

23 (3) For security, rehabilitation programs, recreation, and  
24 treatment of persons confined in correctional facilities:

25 The Department of Corrections and Rehabilitation, state and  
26 local juvenile justice commissions, state and local correctional  
27 officials, experts in criminology and penology, and other interested  
28 persons.

29 (4) For personnel training:

30 The Commission on Peace Officer Standards and Training,  
31 psychiatrists, experts in criminology and penology, the Department  
32 of Corrections and Rehabilitation, state and local correctional  
33 officials, and other interested persons.

34 (5) For female inmates and pregnant inmates in local adult and  
35 juvenile facilities:

36 The California State Sheriffs' Association and Chief Probation  
37 Officers' Association of California, and other interested persons.

38 *(h) This section shall remain in effect only until July 1, 2012,*  
39 *and as of that date is repealed, unless a later enacted statute, that*  
40 *is enacted before July 1, 2012, deletes or extends that date.*

1     *SEC. 4. Section 6030 of the Penal Code, as amended by Section*  
2     *34 of Chapter 36 of the Statutes of 2011, is amended to read:*

3     6030. (a) The Board of State and Community Corrections shall  
4     establish minimum standards for local correctional facilities. The  
5     standards for state correctional facilities shall be established by  
6     January 1, 2007. The board shall review those standards biennially  
7     and make any appropriate revisions.

8     (b) The standards shall include, but not be limited to, the  
9     following: health and sanitary conditions, fire and life safety,  
10    security, rehabilitation programs, recreation, treatment of persons  
11    confined in state and local correctional facilities, and personnel  
12    training.

13    (c) The standards shall require that at least one person on duty  
14    at the facility is knowledgeable in the area of fire and life safety  
15    procedures.

16    (d) The standards shall also include requirements relating to the  
17    acquisition, storage, labeling, packaging, and dispensing of drugs.

18    (e) The standards shall require that inmates who are received  
19    by the facility while they are pregnant are provided all of the  
20    following:

21    (1) A balanced, nutritious diet approved by a doctor.

22    (2) Prenatal and postpartum information and health care,  
23    including, but not limited to, access to necessary vitamins as  
24    recommended by a doctor.

25    (3) Information pertaining to childbirth education and infant  
26    care.

27    (4) A dental cleaning while in a state facility.

28    (f) The standards shall provide that ~~at no time shall a woman~~  
29    ~~who is in labor be a woman known to be pregnant shall not be~~  
30    shackled by the wrists, ankles, ~~or both including~~ around the  
31    abdomen, or to another person, except as provided in Section  
32    5007.7. This includes, but is not limited to, time spent outside a  
33    correctional facility, during transport to a hospital, during or from  
34    a correctional facility, during labor, during delivery, and while  
35    in recovery after giving birth, except as provided in Section 5007.7.  
36    The board shall develop standards regarding the shackling of  
37    pregnant women pursuant to the amendments made to this  
38    subdivision as part of its biennial review of the standards  
39    established pursuant to this section.

1 (g) In establishing minimum standards, the authority shall seek  
2 the advice of the following:

3 (1) For health and sanitary conditions:

4 The State Department of ~~Health Services~~ *Public Health*,  
5 physicians, psychiatrists, local public health officials, and other  
6 interested persons.

7 (2) For fire and life safety:

8 The State Fire Marshal, local fire officials, and other interested  
9 persons.

10 (3) For security, rehabilitation programs, recreation, and  
11 treatment of persons confined in correctional facilities:

12 The Department of Corrections and Rehabilitation, state and  
13 local juvenile justice commissions, state and local correctional  
14 officials, experts in criminology and penology, and other interested  
15 persons.

16 (4) For personnel training:

17 The Commission on Peace Officer Standards and Training,  
18 psychiatrists, experts in criminology and penology, the Department  
19 of Corrections and Rehabilitation, state and local correctional  
20 officials, and other interested persons.

21 (5) For female inmates and pregnant inmates in local adult and  
22 juvenile facilities:

23 The California State Sheriffs' Association and Chief Probation  
24 Officers' Association of California, and other interested persons.

25 *(h) This section shall become operative on July 1, 2012.*

26 ~~SEC. 4.~~

27 *SEC. 5.* Section 222 of the Welfare and Institutions Code is  
28 amended to read:

29 222. (a) Any female in the custody of a local juvenile facility  
30 shall have the right to summon and receive the services of any  
31 physician and surgeon of her choice in order to determine whether  
32 she is pregnant. If she is found to be pregnant, she is entitled to a  
33 determination of the extent of the medical services needed by her  
34 and to the receipt of those services from the physician and surgeon  
35 of her choice. Any expenses occasioned by the services of a  
36 physician and surgeon whose services are not provided by the  
37 facility shall be borne by the female.

38 (b) A ward known to be pregnant shall not be shackled by the  
39 wrists, ankles, around the abdomen, or to another person, unless  
40 deemed necessary for the safety and security of the ward, the staff,

1 or the public. In cases where restraints are deemed necessary, the  
2 least restrictive means shall be used, which may include cuffing  
3 an inmate's wrists in front, consistent with the legitimate security  
4 needs of each ward. The restraints shall remain in place only as  
5 long as the threat exists. These provisions apply to, but are not  
6 limited to, movement within the correctional facility, transport to  
7 and from the facility, and time spent outside of the facility to  
8 receive medical or dental care, to attend court, or any other  
9 appointment.

10 (c) For purposes of this section, "local juvenile facility" means  
11 any city, county, or regional facility used for the confinement of  
12 juveniles for more than 24 hours.

13 (d) The rights provided to females by this section shall be posted  
14 in at least one conspicuous place to which all female wards have  
15 access.

16 ~~SEC. 5.~~

17 *SEC. 6.* Section 1774 of the Welfare and Institutions Code is  
18 amended to read:

19 1774. (a) Any female who has been committed to the  
20 Department of Corrections and Rehabilitation, Division of Juvenile  
21 Facilities shall have the right to summon and receive the services  
22 of any physician and surgeon of her choice in order to determine  
23 whether she is pregnant. The Chief Deputy Secretary for Juvenile  
24 Justice may adopt reasonable rules and regulations with regard to  
25 the conduct of examinations to effectuate that determination.

26 (b) If she is found to be pregnant, she is entitled to a  
27 determination of the extent of the medical services needed by her  
28 and to the receipt of those services from the physician and surgeon  
29 of her choice. Any expenses occasioned by the services of a  
30 physician and surgeon whose services are not provided by the  
31 facility shall be borne by the female.

32 (c) A ward who gives birth while under the jurisdiction of the  
33 Department of Corrections and Rehabilitation, Division of Juvenile  
34 Facilities, or a community treatment program has the right to the  
35 following services:

36 (1) Prenatal care.

37 (2) Access to prenatal vitamins.

38 (3) Childbirth education.

39 (d) A ward known to be pregnant shall not be shackled by the  
40 wrists, ankles, around the abdomen, or to another person, unless



1 deemed necessary for the safety and security of the ward, the staff,  
2 and the public. In cases where restraints are deemed necessary,  
3 the least restrictive means shall be used, which may include cuffing  
4 an inmate's wrists in front, consistent with the legitimate security  
5 needs of each ward. The restraints shall remain in place only as  
6 long as the threat exists. These provisions apply to, but are not  
7 limited to, movement within the correctional facility, transport to  
8 and from the facility, and time spent outside of the facility to  
9 receive medical or dental care, to attend court, or any other  
10 appointment.

11 (e) Any physician providing services pursuant to this section  
12 shall possess a current, valid, and unrevoked certificate to engage  
13 in the practice of medicine issued pursuant to Chapter 5  
14 (commencing with Section 2000) of Division 2 of the Business  
15 and Professions Code.

16 (f) The rights provided to females by this section shall be posted  
17 in at least one conspicuous place to which all female wards have  
18 access.